

DEVELOPMENT FEE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of this _____ day of _____, 200___ by and between the City of Scottsdale ("the City"), and the owner of the real property described herein, (the "Developer"). The Developer and the City are referred to collectively in this Agreement as the "Parties," and individually as "Party." This Agreement is entered into pursuant to City of Scottsdale Revised Code Chapter 49.

RECITALS

- A. WHEREAS, the City has enacted water, sewer, and water resources development fees (the "Fees") to enable it to meet the need for water and sewer infrastructure, supply, treatment and delivery; and
- B. WHEREAS, the City enacted the Fees pursuant to its authority under Arizona Revised Statutes Sections 9-500.05 and 9-463.05; and
- C. WHEREAS, the Developer wishes to utilize the facilities and water supply that the City provides to the community with the revenue it collects from these fees.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, and for good and valuable consideration, the Parties agree as follows.

AGREEMENT

- 1. The Developer is the owner of approximately _____ acres of real property located in Maricopa County, Arizona, ("the Property"), a legal description of which is attached to this Agreement as Exhibit A. The Property is known as _____, and its location is illustrated on the map attached as Exhibit B with the Property address of _____.
- 2. The Developer is charged with full knowledge of, and compliance with, Scottsdale Revised Code Chapter 49, as amended (the City's Water and Sewer Code). The Developer acknowledges that payment of the Fees is a condition precedent to the receipt of water and sewer services.
- 3. The Developer has submitted a Water and Sewer Need Report to the City that estimates the annual water usage and sewer generation on the Property, and is attached as Exhibit C. The Developer warrants that the estimate was made in good faith. The

Developer agrees to pay additional development fees and applicable penalties for any additional water or sewer capacity that is set forth in its Water and Sewer Need Report.

4. The City will monitor the Developer's water and sewer usage for a minimum three-year period beginning on the date the certificate of occupancy is issued. If the amount of average annual water and/or sewer usage exceeds the projected water or sewer demand stated in the Developer's Water and Sewer Need Report by twenty (20) percent or more, the City shall assess a penalty against the Developer. The penalty shall be the sum of: (a) The Fee for the difference between the demand projected and what was actually used; (b) interest at a rate of ten (10) percent per year on the difference; and (c) twenty (20) percent of the difference. The Fees assessed will be those that are effective at the time that penalties are assessed.
5. If, for any reason, water and/or sewer volumes exceed the Developer's estimate by twenty (20) percent or more, then the Developer may, at any time within the initial three-year monitoring period, avoid or reduce penalties by amending the original Water and Sewer Need Report and paying past due development fees and penalties. If the City accepts the amended report, then the Developer must pay additional Fees equaling the Fees applicable to the difference between the original and the amended demand. The Fees assessed will be those that are effective at the time of submittal of the amended report. If the amended report is submitted within the first twelve (12) months of the monitoring period, the Developer shall pay only the difference between the Fees. If the amended report is submitted within thirteen (13) to twenty-four (24) months of the monitoring period, the Developer shall pay the difference between the Fees plus an additional ten (10) percent of the difference. If the amended report is submitted within twenty-five (25) to thirty-six (36) months of the monitoring period, the Developer shall pay the difference between the Fees plus an additional fifteen (15) percent of the difference.
6. If the Developer fails to pay applicable Fees in accordance with Scottsdale Revised Code Chapter 49, as amended, then the City may pursue any and all remedies available to it at law or in equity including, without limitation: (a) recordation and foreclosure of liens on the Property; (b) filing a civil suit for damages; and/or (c) immediate termination of water and/or sewer service to the Property.
7. Incorporation. All recitals and appendices contained in this Agreement are hereby incorporated by this reference and made an integral part of this Agreement.
8. Governing Law. This Agreement shall be governed, construed and controlled according to the laws of the State of Arizona.
9. Waiver. No delay or failure to exercise any right or remedy on the part of the City shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any other provision.
10. Severability. The terms and conditions of this Agreement are severable. If for any reason, any court of law or administrative agency should deem any provision hereof invalid or inoperative, the remaining provisions of this Agreement shall remain valid and in full force and effect.

11. Legal Fees, Costs and Expenses. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, the prevailing Party shall be entitled to reasonable attorneys fees, costs and expenses, as determined by the court, and which shall be deemed to have accrued on the commencement of such action. This provision shall be enforceable whether or not such action is prosecuted to judgment.
12. No Partnership. It is not intended by this Agreement that anything contained in it shall create any partnership, joint venture or agency relationship between the City and the Developer.
13. No Third Party Beneficiaries. No term or provision of this Agreement shall benefit any third person, including the Developer, or any other firm, organization, or corporation not a Party hereto, and no such person, firm, organization, or corporation shall have any right or cause of action hereunder.
14. Entire Agreement. This Agreement constitutes the entire Agreement of the Parties. No representations, Agreements or understandings, oral or written, other than this Agreement shall vary its terms.
15. Counterparts. This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.
16. Captions. The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.
17. Conflict of Interest. Pursuant to the provisions of A.R.S. Section 38-511, the City may cancel this Agreement, without fee reduction or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is at any time while the Agreement or any extension thereof is in effect an employee of any other Party to the Agreement in any capacity to any other Party to the Agreement with respect to the subject matter of the Agreement. The City is unaware of any such conflict as of the date of the execution of this Agreement.
18. Authority. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
19. Assignment. Neither Party may assign or delegate the rights or obligations of this Agreement except with the written consent of the other Party.
20. Regulatory Compliance. The Developer agrees to comply with all applicable City ordinances and state and federal laws and regulations.
21. Notice. Any notice required to be given pursuant to the provisions of this Agreement shall be given in writing and shall be deemed received when delivered in person or

deposited in the United States mail, postage pre-paid, registered or certified mail, return receipt requested, and properly addressed, at the following addresses:

If to the City:

Michael J. Mahoney, W/R Analyst
City of Scottsdale Water Resources
9388 E. San Salvador Drive
Scottsdale, AZ 85258

If to the Developer:

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

(DEVELOPER)

BY: _____

Its: _____

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
200____, by _____, authorized representative for
_____.

Notary Public

My Commission Expires:

CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: _____
Water Resources
General Manager